

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>International Section 214 Authorization for</b>	)	<b>File Nos. ITC-214-20010427-00255</b>
<b>Assignment of Transfer of Control of Northwest</b>	)	<b>ITC-T/C-20151008-00236</b>
<b>Missouri Cellular Limited Partnership</b>	)	

**To: Chief, International Bureau**

**OPPOSITION TO PETITION TO DENY OR  
SUPPLEMENT OR INFORMAL OBJECTION**

Northwest Missouri Cellular Limited Partnership (“NWMC”), by its counsel, and pursuant to Section 63.20(d) of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby opposes the Petition to Deny or Informal Request for Commission Action (“Petition”) filed on October 16, 2015, by Nicholas Robb (the “Receiver”), as court-appointed receiver for Oregon Farmers Mutual Telephone Company (“OFM”). The Receiver requests that the Commission deny the application of NWMC filed October 8, 2015, and supplemented November 2, 2015, File No. ITC-TC-20151008-00236 (“ITC Application”) notifying the Commission of the involuntary *pro forma* transfer of control of NWMC, specifically, the withdrawal of OFM from the partnership, resulting in an increase in the interests of the remaining partners. To the extent that the formal petition to deny process does not apply to this application, the Receiver requests informal action pursuant to Rule 1.41. For the reasons stated below, the Commission should deny the Petition.<sup>1</sup>

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<sup>1</sup> As indicated in the accompanying Request for Extension of Time or Acceptance *Nunc Pro Tunc*, counsel for NWMC did not receive service copies of the Petition, and only discovered the existence of the Petition on November 17, 2015, while reviewing the IBFS. NWMC requests acceptance and consideration of this Opposition. To the extent that the Commission does not consider this as a formal opposition, the Commission should treat it as a supplement to the ITC Application or an informal objection. Substantially identical issues already are before the

In the Petition, the Receiver generally argues that bankruptcy law trumps state law and that bankruptcy law required NWMC to “revest” the partnership interest in NWMC to OFM upon the Bankruptcy Court’s dismissal of OFM’s bankruptcy petition, and further that the OFM “general partnership and limited partnership interests remain valid.”<sup>2</sup> NWMC generally disputes the bankruptcy arguments of the Receiver. Without limitation, NWMC disputes that OFM remains a general partner in NWMC and disputes any suggestion or implication that a general partnership interest in NWMC was an asset of OFM of which the Receiver could or did take control.

NWMC, however, does not endeavor to address the Receiver’s bankruptcy arguments in this pleading before the Commission, and NWMC’s determination not to expressly address these arguments in this forum is not, nor may it be construed as, an admission or acknowledgement of the validity of the Receiver’s arguments. Instead, NWMC generally agrees with the Receiver that the Commission is not the appropriate forum to adjudicate these issues. These issues are being adjudicated in an appropriate forum.

NWMC is a limited partnership organized under the laws of the State of Delaware. The remaining general partners of NWMC have filed a Complaint in the Court of Chancery of the State of Delaware (the “Court of Chancery”) requesting that the Court of Chancery enter an order declaring that OFM is not a general partner in NWMC. A copy of the Complaint is attached hereto. As stated therein, under applicable Delaware law, OFM ceased to be a general partner in NWMC when: (1) OFM filed a voluntary petition in bankruptcy on April 6, 2015; (2) OFM consented to the appointment of a receiver on or before June 15, 2015; and/or (3) the appointment of that receiver was not vacated or stayed within 90 days after June 15, 2015. OFM

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Commission in connection with FCC Form 603 File No. 0006932939 regarding the wireless licenses held by NWMC.

<sup>2</sup> See, e.g., Petition at p. 3.

has moved to dismiss the Complaint, and the parties initially stipulated a briefing schedule commencing on November 23, 2015 (subsequently extended to today, November 25, 2015), and concluding on January 7, 2016. NWMC filed a Motion For Summary Judgment on November 24, 2015, and expects that this motion will not materially delay the briefing schedule. The Receiver also has filed a motion requesting a determination from the Circuit Court of Holt County Missouri (the “Circuit Court”), and the Circuit Court has entered an order indicating that it intends to determine the status of OFM’s interest in NWMC. NWMC anticipates swift adjudication of this matter in either Delaware or Missouri.

There is, however, no basis for the Commission to deny the ITC Application. NWMC has endeavored to provide notice of the involuntary, *pro forma* transfer of control consistent with the rules.<sup>3</sup> The pendency of a private dispute does not prevent the Commission from acting on NWMC’s application. “Absent the issuance of an injunction or stay ... the Commission has routinely granted assignment applications that are the subject of private legal disputes.”<sup>4</sup> No stay or injunction prevents the Commission from acting on the ITC Application, and the Receiver can cite to no order or determination by a court that OFM continues to hold the partnership interests. To the contrary, in the September 24, 2015, Order of the Circuit Court, attached hereto, the Circuit Court specifically ordered:

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<sup>3</sup> As indicated in Attachment I to the ITC Application, however, the withdrawal of OFM does not result in any partner acquiring 50% or more of the partnership interests in NWMC. Nor does the withdrawal result in the addition of any new partner on whose qualifications the Commission had not previously passed. Accordingly, NWMC does not believe that the event constitutes a cognizable transfer of control requiring Commission notification pursuant to Rule 63.24. At most, the event was a *pro forma* transfer, and NWMC sought waiver of the requirement to file the notification within 30 days of the event. NWMC filed the application out of an abundance of caution.

<sup>4</sup> *Estate of Peggy Haley, N.C.M.*, 23 FCC Rcd 12687, 12688 referencing *H. Edward Dillon*, Memorandum Opinion and Order, 42 F.C.C.2d 203 (1973).

For avoidance of doubt, no determination has been made in these proceedings by this Court regarding the status, extent, ownership or nature of any partnership interest in Northwest Missouri Cellular, whether expressly or by implication.<sup>5</sup>

Accordingly, there is neither an express nor implied determination by the Circuit Court regarding OFM's interest in NWMC or that the partnership interest in NWMC was an asset of which the Receiver could or did take control in connection with the June 15, 2015, Order of the Circuit Court appointing the Receiver.

Moreover, Commission acceptance of the ITC Application will not prejudice the Receiver in any way. The Receiver and OFM are free to litigate the matter in court. The disposition of the partnership interest will be determined in an appropriate court, and NWMC will update the Commission's ownership records as necessary and appropriate following such determination.<sup>6</sup> Denial of the pending ITC Application, however, is not justified and would be a waste of Commission and licensee resources.

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<sup>5</sup> *Townes Missouri, Inc. v. Northwest Missouri Holdings, Inc.*, Case No. 14HO-CC00011, Order at ¶ 14 (Circuit Court of Holt County, Missouri, filed Sept. 24, 2015).

<sup>6</sup> NWMC has even offered to explore working with the Receiver and the Commission so that the Receiver can make any necessary filings with the Commission to allow the Receiver to complete his work as a Receiver prior to a final determination.

Accordingly, for the reasons stated herein, the Commission should deny the Petition.

Respectfully submitted,

Northwest Missouri Cellular  
Limited Partnership

A handwritten signature in black ink, appearing to read 'G. Whiteaker', with a long horizontal flourish extending to the right.

By: \_\_\_\_\_  
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*Its Attorneys*

November 30, 2015



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

MISSOURI STATE LINE COMMUNICATIONS, )  
INC., ALLTEL COMMUNICATIONS, LLC, )  
GRAND RIVER COMMUNICATIONS, INC., and )  
ROCK PORT TELEPHONE COMPANY, )

Plaintiffs, )

v. )

OREGON FARMERS MUTUAL TELEPHONE )  
COMPANY, )

Defendant, )

- and - )

NORTHWEST MISSOURI CELLULAR )  
LIMITED PARTNERSHIP, )

Nominal Defendant. )

C.A. No. \_\_\_\_\_ - \_\_\_\_

**VERIFIED COMPLAINT**

Missouri State Line Communications, Inc.; Alltel Communications, LLC; Grand River Communications, Inc.; and Rock Port Telephone Company (together, “Plaintiffs”), by and through their undersigned counsel, as and for their verified complaint against Oregon Farmers Mutual Telephone Company (“OFM”), allege as follows:

1. Defendant OFM used to be a general partner of Northwest Missouri Cellular Limited Partnership (the “Partnership”). In April 2015, OFM filed a voluntary petition for bankruptcy. In June 2015, OFM consented to the

appointment of a receiver for OFM. By operation of Delaware law, OFM is no longer a general partner of the Partnership. Plaintiffs are entitled to a declaration under 6 *Del. C.* § 17-110 to that effect.

### **PARTIES**

2. Plaintiff Missouri State Line Communications, Inc. is a Missouri corporation and a partner in the Partnership.

3. Plaintiff Alltel Communications, LLC is a Delaware limited liability company and a partner in the Partnership.

4. Plaintiff Grand River Communications, Inc. is a Missouri corporation and a partner in the Partnership.

5. Plaintiff Rock Port Telephone Company is a Missouri corporation and a partner in the Partnership.

6. Defendant Oregon Farmers Mutual Telephone Company is a Missouri corporation and was a general partner in the Partnership.

7. Nominal defendant Northwest Missouri Cellular Limited Partnership is a Delaware limited partnership, with its principal place of business in Maryville, Missouri. The Partnership's business involves providing cellular service in a portion of northwest Missouri.

## **FACTUAL BACKGROUND**

8. The Partnership was formed in 1989 under the name Missouri 1 - Atchison RSA Limited Partnership. As of the beginning of 2015, the Partnership's partners included Plaintiffs and OFM. Each Plaintiff was both a general partner and a limited partner in the Partnership, as was OFM.

9. In 2004, OFM and/or certain affiliates of OFM entered into a loan agreement and related agreements and instruments (the "Loan Documents") with the Rural Telephone Finance Corporation (the "RTFC"), including a note payable to the RTFC in the principal amount of \$7,388,889. Townes Missouri, Inc. ("Townes") later acquired the RTFC's interest in the note and the other Loan Documents. OFM and its affiliates never paid off this loan in full.

10. In early 2015, Townes filed a motion in a Missouri court to appoint a receiver for OFM and certain of its affiliates.

11. On April 6, 2015, OFM and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code.

12. Townes moved to dismiss OFM's bankruptcy case, and that motion was granted on May 25, 2015.

13. OFM and its affiliates that were defendants in the Missouri action consented to the appointment of a receiver in the Missouri action. The receiver was appointed on June 15, 2015, by order of the Missouri court. On September 24,

2015, the Missouri court authorized OFM's receiver to enter into a settlement agreement with Townes.

**COUNT I**  
**(Declaratory Judgment Under 6 *Del. C.* § 17-110)**

14. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

15. There exists a real, present, and justiciable controversy between the parties over whether OFM is still a general partner of the Partnership.

16. Under 6 *Del. C.* § 17-402(a)(4)(b), a general partner of a Delaware limited partnership ceases to be a general partner when it “[f]iles a voluntary petition in bankruptcy.” OFM filed a voluntary petition in bankruptcy on April 6, 2015.

17. Under 6 *Del. C.* § 17-402(a)(4)(f), a general partner of a Delaware limited partnership ceases to be a general partner when it “consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner.” OFM consented to the appointment of a receiver of OFM on or before June 15, 2015.

18. Under 6 *Del. C.* § 17-402(a)(5), a general partner of a Delaware limited partnership ceases to be a general partner if, “within 90 days after the appointment without the general partner’s consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his or

her properties, the appointment is not vacated or stayed.” A receiver of OFM was appointed on June 15, 2015, more than 90 days ago, and that appointment was not vacated or stayed within 90 days after June 15, 2015.

19. Plaintiffs are entitled to a declaration that OFM ceased to be a general partner of the Partnership. On information and belief, OFM disputes or will dispute this contention.

20. Plaintiffs have no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter an order:

- a. Declaring that OFM is not a general partner of the Partnership;
- b. Awarding Plaintiffs their reasonable attorneys’ fees and costs; and
- c. Awarding Plaintiffs such other and further relief as the Court may deem just and proper.

*/s/ Blake Rohrbacher*

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Blake Rohrbacher (#4750)

Susan M. Hannigan (#5342)

Rachel E. Horn (#5906)

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*Attorneys for Plaintiffs Missouri State Line  
Communications, Inc., Alltel Communications,  
LLC, Grand River Communications, Inc., and  
Rock Port Telephone Company*

Dated: October 2, 2015

IN THE CIRCUIT COURT OF HOLT COUNTY, MISSOURI

Townes Missouri, Inc. )  
 )  
 ) Petitioner. )  
 ) vs. )  
 )  
 ) Northwest Missouri Holdings, Inc., a Missouri )  
 ) Corporation, )  
 )  
 ) And )  
 )  
 ) Oregon Farmers Mutual Telephone Company, )  
 ) a Missouri Corporation, )  
 )  
 ) And )  
 )  
 ) Oregon Farmers Mutual Long Distance, Inc., )  
 ) a Missouri Corporation, )  
 )  
 ) And )  
 )  
 ) South Holt Cablevision, Inc., a Missouri )  
 ) Corporation, )  
 )  
 ) Defendants. )

Case No. 14HO-CC00011

**FILED**

**9/24/2015**

**VICKI BOOK  
CIRCUIT CLERK-DIV I  
HOLT COUNTY, MISSOURI**

**ORDER**

On this day the Court takes up the Receiver's Agreed Upon Motion for Transfer by Receiver. After consideration of the Agreed Upon Motion for Transfer by Receiver and the issues raised by Northwest Missouri Cellular Limited Partnership ("Northwest Missouri Cellular"), the Court finds that the transfer is appropriate and necessary and therefore states and finds as follows:

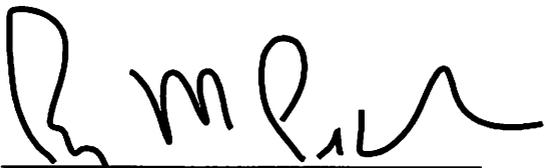
1. The Court entered a Judgment in favor of Petitioner on January 28, 2015 ("Judgment") and issued a Writ of Execution.
2. The parties consented to the appointment of a receiver pursuant to the Judgment.

3. The Court entered an order on June 15, 2015 appointing Nicholas Robb, of Morton, Reed, Counts, Briggs, & Robb as the receiver ("Receiver").
4. At a court ordered mediation, the Receiver, the parties in this action, and other related entities, have reached a global settlement of claims.
5. The Receiver shall enter into the settlement agreement.
6. Pursuant to the Writ of Execution, Judgment, Order Appointing the Receiver, and other terms of the parties' settlement, the owners and holders of all of the shares of Northwest Missouri Holdings, Inc. ("Shares") will transfer them to the Receiver.
7. The Receiver shall transfer the Shares to Townes Missouri, Inc. pursuant to the Writ of Execution.
8. Nicholas Robb, as the Receiver, is authorized to do the following:
  - a. Execute the settlement agreement;
  - b. Take possession of the Shares;
  - c. Notify any and all regulatory authorities of the Receiver's possession of and transfer of the Shares to Townes Missouri, Inc.;
  - d. Apply for regulatory approvals required to transfer the Shares to Townes Missouri, Inc.;
  - e. Transfer the Shares to Townes Missouri, Inc.
9. Upon the completion of the tasks in paragraph (8) of this Order, Receiver is relieved of any further duties. Receiver shall inform the court by letter when all of the listed tasks in paragraph (8) have been completed. Notwithstanding the foregoing, the rights, protections, provisions and requirements of this order shall survive any discharge of the Receiver.

10. Receiver may utilize any and all assistance he desires from Townes Missouri, Inc. to obtain the necessary regulatory approvals, if any.
11. Receiver may perform any tasks, which in Receiver's business judgment, are desirable to continue service to the public.
12. Northwest Missouri Holdings, Inc. shall pay Receiver's reasonable fees and expenses
13. Nothing in this Order shall mitigate, diminish or otherwise affect any claim or argument by Northwest Missouri Cellular that any regulatory notification or application is improper, and all rights asserted or assertable by Northwest Missouri Cellular, whether sounding in contract, tort or otherwise, that might arise from any regulatory notification or application by the Receiver are expressly reserved.
14. For the avoidance of doubt, no determination has been made in these proceedings by this Court regarding the status, extent, ownership or nature of any partnership interest in Northwest Missouri Cellular, whether expressly or by implication. Notwithstanding anything contained in or omitted from this Order, neither this Order nor the settlement agreement shall be deemed to, nor shall they operate to, alter, impair, change, affect, increase or decrease the nature, validity or extent of any right or claim that any person may have or assert regarding the status, validity, extent, ownership or nature of any partnership interest or claim to a partnership interest in Northwest Missouri Cellular.

SO ORDERED.

September 24, 2015.



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Judge Roger Prokes

**CERTIFICATE OF SERVICE**

I, Gregory W. Whiteaker, an attorney with the law firm Herman & Whiteaker, LLC, do hereby certify that I caused a copy of the foregoing Opposition to Petition to Deny or Supplement or Informal Objection to be served, as specified, this 30<sup>th</sup> day of November, 2015, on the following:

Via First-Class Mail:

John A. Pendergast, Esq.  
Benjamin H. Dickens, Jr.  
Salvatore Taillefer, Jr., Esq.  
Blooston, Mordkofsky, Dickens, Duffy & Pendergast, L.L.P.  
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Washington, DC 20037

A handwritten signature in black ink, appearing to read 'G. Whiteaker', with a long horizontal flourish extending to the right.

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Gregory W. Whiteaker